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UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF OREGON

In re:

WILLIAM JOHN BERMAN,

Debtor-in-possession,

Case No. 19-60230-pcm11

REPLY TO DEBTOR WILLIAM J.  
BERMAN'S RESPONSE TO AD HOC  
GROUP'S MOTION FOR CLASS  
CERTIFICATION

The Hathaway Claimants hereby respond to Debtor's response to the Motion for Class Certification.

pg. 1 REPLY TO DEBTOR WILLIAM J. BERMAN'S RESPONSE TO AD HOC GROUP'S MOTION FOR CLASS CERTIFICATION

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1 THE HATHAWAY CLAIMANTS HAVE  
2 FILED A MOTION UNDER RULE 9014  
3

4 Debtor objects to class certification due to Claimant's failure to file a motion under Rule  
5 9014. Claimants have since filed a motion under Rule 9014 and outlined why the Court should  
6 apply Rule 7023.

7 Claimant's have sought class certification for 1) to prosecute and defend the proof of  
8 claim and 2) objecting to the claim of Saalfeld Griggs. The Saalfeld Griggs claim objection is no  
9 longer pending. Therefore, Claimants are seeking class certification for purposes related to only  
10 their proof of claim. Debtor has stipulated to granting relief from the automatic stay to allow the  
11 Circuit Court to allow the Claimants to obtain a supplemental judgment for attorney fees.  
12 Therefore, Debtor's argument that Claimants are seeking to certify a class for multiple claims or  
13 multiple undefined matters is not a correct statement of what Claimants are seeking.  
14

15 It is generally accepted that a Rule 9014 seeking to apply 7023 is filed separately from a  
16 Rule seeking certification under 7023. "In a contested matter, the party seeking to rely on Rule  
17 23 must file a motion under Rule 9014." *In re Dynegy, Inc.*, 770 F.3d 1064, 1069 (2<sup>nd</sup> Cir.  
18 2014).  
19

20 Here, the Claimants have filed their motions under Rules 7023 and 9014 seeking class  
21 certification for their proof of claim. Therefore, Claimants have complied with the procedure.  
22 Rule 9014(c) on its face does not state that a motion needs to be filed if a party wishes to apply  
23 one of the non-enumerated rules of Part VII of the Bankruptcy Rules.  
24

25 ///  
26  
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28 pg. 2 REPLY TO DEBTOR WILLIAM J. BERMAN'S RESPONSE TO AD HOC GROUP'S  
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1 This Court sits as a court of equity to accomplish the purposes of the Bankruptcy Code.  
2 See *Gentry v. Siegel*, 668 F.3d 83, 93 (4th Cir. 2012) citing: *Katchen v. Landy*, 382 U.S. 323,  
3 327, 86 S.Ct. 467, 15 L.Ed.2d 391 (1966) *Montgomery Ward & Co. v. Langer*, 168 F.2d 182,  
4 187 (8th Cir.1948).  
5

6 Here, the Debtor has a confirmed plan. Prior to confirmation and during confirmation the  
7 Claimants made objections and introduced evidence. Debtor made no objection to the class  
8 status of the Claimants. Further, the Plan provides for payment of the Claimants Claims without  
9 any objection to Claimant's status. Debtor has objected to Claimant's Claim and Rule 9014  
10 applies; therefore, Claimants are now seeking to have the Court use its equitable powers to allow  
11 the Claimants to have the Claim allowed on a class basis. The need to use this equitable power is  
12 particularly important here when there is ongoing litigation between the parties.  
13

14 The Circuit Court has ongoing duties to class members to ensure that any distribution is  
15 fair and equitable and to oversee the compensation of the attorneys for the class. Since this  
16 process is ongoing, allowing class certification of the proof of claim would help effectuate and  
17 provide comity to the Circuit Court's duties.  
18

19 TO THE EXTENT DEBTOR IS PREJUDICED, CLAIMANTS  
20 DO NOT OBJECT TO SUBSEQUENT BRIEFING  
21

22 Debtor states that he does not believe Rule 23 has been satisfied. However, the Oregon  
23 rule for class certification is nearly identical to the Federal rule for class certification. Since the  
24 Circuit Court has already ruled that Claimants have met the requirements for class certification  
25 for their claims against Debtor it is doubtful that there is merit to this argument. However, to the  
26

27  
28 pg. 3 REPLY TO DEBTOR WILLIAM J. BERMAN'S RESPONSE TO AD HOC GROUP'S  
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1 extent Debtor has been prejudiced by Claimant's filing of a Rule 23 motion prior to the Rule  
2 2019 motion, Claimants do not object to any additional briefing needed by the Debtor.

3 Dated: May 1, 2020.

4  
5 /s/ Keith D. Karnes  
6 Keith D. Karnes OSB # 033521  
7 Attorney for Hathaway Claimants  
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28 pg. 4 REPLY TO DEBTOR WILLIAM J. BERMAN'S RESPONSE TO AD HOC GROUP'S  
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**CERTIFICATE OF SERVICE**

I, Keith Karnes, certify that I served the forgoing document via ECF which will in turn serve:

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And I further served the following via first class mail, postage prepaid, addressed to:

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DATED: May 1, 2020

/s/Keith D. Karnes  
Keith D. Karnes, OSB No. 033521  
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pg. 5 REPLY TO DEBTOR WILLIAM J. BERMAN'S RESPONSE TO AD HOC GROUP'S  
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